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C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 15886

E.O. 12356: N/A
TAGS: [PHUM](#) [PINS](#) [PGOV](#) [UN](#) [PO](#) [ID](#)
SUBJECT: "XANANA" GUSMAO TO BE TRIED AS CRIMINAL

REFS: A. JAKARTA 15387, B. JAKARTA 15051, C. JAKARTA 14905, D. JAKARTA 14491

11. CONFIDENTIAL - ENTIRE TEXT.

:SUMMARY
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12. INDONESIAN NATIONAL POLICE CHIEF KUNARTO TOLD REPORTERS DEC. 28 THAT CAPTURED EAST TIMOR GUERRILLA LEADER JOSE "XANANA" GUSMAO WOULD BE TRIED ON A NUMBER OF CRIMINAL CHARGES; HE DID NOT MENTION ANY CHARGES UNDER THE ANTI-SUBVERSION LAW. KUNARTO SAID THE TRIAL WOULD PROBABLY BE HELD IN DILI AND WOULD BEGIN IN JANUARY IF THE POLICE INVESTIGATION IS CONCLUDED ON SCHEDULE. A HUMAN RIGHTS LAWYER WITH THE INDONESIAN BAR ASSOCIATION (IKADIN) TOLD EMBOFF GUSMAO'S WIFE HAD DESIGNATED THE INDONESIAN LEGAL AID INSTITUTE (LBH) TO DEFEND HER HUSBAND, BUT LBH HAD SO FAR BEEN UNABLE TO INFORM GU"MAO OF THIS. THE LAWYER FEELS KUNARTO'S ANNOUNCEMENT PROBABLY REFLECTS THE OFFICIAL GOI DETERMINATION REGARDING CHARGES; WHEN HE VISITED POLICE HEADQUARTERS TWO WEEKS AGO, A DECISION ON WHETHER OR NOT TO CHARGE GUSMAO WITH SUBVERSION WAS STILL PENDING. END SUMMARY.

POLICE CHIEF ANNOUNCES CHARGES
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13. CHIEF OF THE INDONESIAN NATIONAL POLICE (POLRI) GEN. (POL.) KUNARTO TOLD REPORTERS DEC. 28 THAT CAPTURED FRETELIN LEADER GUSMAO WOULD BE CHARGED UNDER THE INDONESIAN CRIMINAL CODE (KUHP). ACCORDING TO PRESS REPORTS, KUNARTO SAID THE PRINCIPAL CHARGE AGAINST GUSMAO WOULD BE FILED UNDER CHAPTER 106 OF KUHP (CONSPIRACY TO PLACE ALL OR PART OF THE NATIONAL TERRITORY UNDER THE CONTROL OF A FOREIGN GOVERNMENT OR TO SEPARATE PART OF THE NATIONAL TERRITORY), WHICH REPORTEDLY CARRIES A MAXIMUM PENALTY OF LIFE IN PRISON. SUBSIDIARY CHARGES WILL REPORTEDLY BE FILED UNDER CHAPTER 108 (ARMED OPPOSITION TO INDONESIAN AUTHORITY) AND CHAPTER 110 OF KUHP, AND UNDER EMERGENCY LAW NO. 12 OF 1951 (ILLEGAL STOCKPILING OF FIREARMS). PRESS REPORTS DID NOT MENTION ANY REFERENCE BY KUNARTO TO CHARGES UNDER THE ANTI-SUBVERSION LAW OF 1963.

14. KUNARTO ALSO WAS QUOTED AS SAYING GUSMAO WOULD "PROBABLY" BE TRIED IN DILI, CONFIRMING EARLIER GOI STATEMENTS. PROVIDED THE ONGOING POLICE INVESTIGATION OF GUSMAO IS CONCLUDED ON SCHEDULE, KUNARTO SAID, THE CASE SHOULD BE TRANSFERRED TO PROSECUTORS SHORTLY, AND THE TRIAL WOULD BEGIN IN JANUARY. ASKED ABOUT PERMISSION TO INTERVIEW GUSMAO, KUNARTO TOLD JOURNALISTS NOT JUST ANYONE COULD MEET WITH THE FRETELIN LEADER, ADDING THERE WERE ALSO PROBLEMS WITH LANGUAGE.

:HUMAN RIGHTS LAWYERS SEEK ACCESS
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15. FRANS HENDRA WINARTA, A PROMINENT HUMAN RIGHTS LAWYER WHO WAS PART OF THE IKADIN-LBH TEAM WHICH DEFENDED TIMORESE TRIED FOR INVOLVEMENT IN THE DEMONSTRATION WHICH PRECEDED THE KILLINGS IN DILI ON NOV. 12, 1991, AND A SUBSEQUENT PROTEST IN JAKARTA, TOLD EMBOFF A FAX FROM GUSMAO'S WIFE IN AUSTRALIA HAD BEEN RECEIVED APPOINTING LBH TO DEFEND HER HUSBAND. ON THE BASIS OF THIS FAX, WINARTA AND LAWYERS FROM LBH VISITED POLRI HEADQUARTERS TWO WEEKS AGO IN A VAIN ATTEMPT TO GAIN ACCESS TO GUSMAO. THEY WERE TOLD GUSMAO HAD ALREADY APPOINTED ANOTHER ATTORNEY TO DEFEND HIM. (PRESS REPORTS HAVE MENTIONED SOEDJONO, A JAKARTA LAWYER, AS THE COUNSEL PURPORTEDLY CHOSEN BY GUSMAO.) ACCORDING TO WINARTA, HOWEVER, LBH HAS RELIABLY CONFIRMED THAT GUSMAO HAS NOT YET APPOINTED DEFENSE COUNSEL.

16. WINARTA SAID HE WAS TOLD AT THE TIME OF HIS VISIT TO POLRI HEADQUARTERS THAT THE GOVERNMENT HAD NOT YET DECIDED WHETHER OR NOT TO CHARGE GUSMAO WITH SUBVERSION. HE FEELS KUNARTO'S STATEMENT AS REPORTED IN THE PRESS PROBABLY REFLECTS THE GOI'S DECISION ON THE MATTER. WINARTA HAS HEARD GUSMAO WILL ALSO BE CHARGED WITH MURDER (CHAPTER 338 OF KUHP). HE DESCRIBED THE APPARENT DECISION NOT TO FILE SUBVERSION CHARGES AS "FUNNY," CONSIDERING A NUMBER OF PARTICIPANTS IN DEMONSTRATIONS ALLEGEDLY "MASTERMINDED" BY GUSMAO WERE TRIED AND CONVICTED OF SUBVERSION EARLIER THIS YEAR. HE SPECULATED THE GOI'S DECISION WAS THE PRODUCT OF NEGOTIATIONS BETWEEN THE GOI AND ANOTHER PARTY OR PARTIES, POSSIBLY INCLUDING GUSMAO HIMSELF. WINARTA SAID HE HOPES TO REPRESENT GUSMAO IN HIS TRIAL BUT ADMITS LANGUAGE COULD POSE DIFFICULTIES, SINCE HE SPEAKS NEITHER PORTUGUESE NOR TETUN.

:COMMENT
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17. KUNARTO'S ENUMERATION OF CHARGES AGAINST GUSMAO APPEARS TO CONFIRM REPORTS THE FRETILIN LEADER WOULD BE TRIED ONLY ON CRIMINAL CHARGES (REF C). WINARTA'S AND LBH'S DIFFICULTIES IN OBTAINING ACCESS TO GUSMAO, AND THE APPARENT EFFORT TO DESIGNATE A DEFENSE COUNSEL FROM OUTSIDE THE HUMAN RIGHTS COMMUNITY, ARE REMINISCENT OF THE EARLY STAGES OF LAST SPRING'S SUBVERSION TRIALS IN DILI. WINARTA HAS PROMISED TO KEEP US UP-TO-DATE ON DEVELOPMENTS ON THIS FRONT, AND WE WILL CHECK IN WITH LBH WHEN ITS MEMBERS RETURN FROM VACATION ON JAN. 4. END COMMENT.

BARRY